



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

**[SATS No. AL-082-FOR; Docket ID: OSM-2017-0011;
S1D1S SS08011000 SX064A000 189S180110;
S2D2S SS08011000 SX064A000 18XS501520]**

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its program regarding permit fees. Alabama revised its program at its own initiative to raise revenues sufficient to fund the Alabama Surface Mining Commission's (ASMC) share of costs to administer the Alabama coal

regulatory program, including the reviewing, administering, inspecting, and enforcing of surface coal mining permits in Alabama.

DATES: The effective date is [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: William Joseph, Acting Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290-7282. Email: bjoseph@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Alabama Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decisions
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I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the requirements of the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By email dated August 14, 2017 (Administrative Record No. AL-0672), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative.

We announced the receipt of the proposed amendment in the January 22, 2018, **Federal Register** (83 FR 2953). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of

the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 21, 2018. We received four public comments (Administrative Record No. AL-0672-03) that are addressed in the Public Comments section of IV, Summary and Disposition of Comments, below.

III. OSMRE's Findings

We are approving the amendment as described below. The following are findings we made concerning Alabama's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov.

Alabama Administrative Code 880-X-8B-.07

Alabama proposed to revise its regulations at Alabama Administrative Code 880-X-8B-.07, increasing coal mining permit fees to adequately fund the ASMC for the purposes of reviewing, administering, inspecting, and enforcing surface coal mining permits in Alabama.

By this amendment, Alabama is:

- (1) Increasing the initial acreage fee from \$35.00 per acre to \$75.00, to be paid on

each acre in a permit covered by a performance bond prior to the initiation of operations on the permit (or on an increment if increments are used), and to be paid on all bonded acreage covered by a permit renewal;

- (2) Increasing the basic fee for a coal exploration permit application from \$2,000.00 to \$2,500.00;
- (3) Increasing the basic fee for a permit renewal application from \$1,000.00 to \$2,500.00;
- (4) Increasing the basic fee for a permit transfer application from \$200.00 to \$500.00;
- (5) Adding an annual acreage fee for expired permits of \$15.00, per acre, to be paid by December 31st of each year on each acre covered by a performance bond as of October 1st of the year; and
- (6) Adding the inspection of permits to the ASMC's uses for the deposited permit fees.

Alabama fully funds its share of costs to regulate the coal mining industry with fees paid by the coal industry. The proposed fee revisions are intended to provide adequate funding to pay the State's cost of operating its regulatory program. The ASMC

does not expect the increase in permit fees to exceed the actual or anticipated cost of reviewing, administering, inspecting, and enforcing surface coal mining permits in Alabama.

We find that Alabama's fee changes are consistent with the discretionary authority provided by the Federal regulation at 30 CFR 777.17. Therefore, we are approving Alabama's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. As noted in section II, we received four comments (Administrative Record No. AL-0672-03). The four commenters provided comments that were outside the scope of the proposed amendment and not germane to the topic of surface coal mining in general. We are not addressing these comments in this final rule for these reasons. The full texts of these comments are available at www.regulations.gov.

Federal Agency Comments

On August 21, 2017, pursuant to 30 CFR 732.17(h)(11)(i) and Section 503(b) of

SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL-0672-02). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 21, 2017, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL-0672-02). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 21, 2017, we requested comments on the amendment (Administrative Record No. AL-0672-02). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we are approving the Alabama amendment that was submitted on August 14, 2017 (Administrative Record No. AL-0672).

To implement this decision, we are amending the Federal regulations at 30 CFR part 901 that codify decisions concerning the Alabama program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rulemaking does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993,

the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Alabama drafted.

Executive Order 13132 - Federalism

This rule is not a "[p]olicy that [has] Federalism implications" as defined by Section 1(a) of Executive Order 13132 because it does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on

the distribution of power and responsibilities among the various levels of government.”

Instead, this rule approves an amendment to the Alabama program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). As such, pursuant to Section 503(a)(1) and (7)(30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on Federally-recognized Tribes and have determined that the rulemaking does not have substantial direct effects on one or more Tribes, on the relationship between the Federal government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rulemaking does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rulemaking would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rulemaking will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 2018.

Alfred L. Clayborne, Regional Director,
Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901 - ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding an entry for “Alabama Administrative Code 880-X-8B-.07” in chronological order by “Date of final publication” to read as follows:

§901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * August 14, 2017	* * <u>[Insert date of publication in the Federal Register]</u>	Alabama Administrative Code 880-X-8B-.07

[FR Doc. 2018-18716 Filed: 8/28/2018 8:45 am; Publication Date: 8/29/2018]